

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Walter G. Dixon, et al.
Serial No.: 10/627,858
Filing Date: July 25, 2003
Confirmation No.: 2644
Group Art Unit: 2114
Examiner: Joshua A. Lohn
Title: SYSTEM AND METHOD FOR PROVIDING
REDUNDANT DATA LOAD SHARING IN A
DISTRIBUTED NETWORK

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

REQUEST FOR PRE-APPEAL BRIEF REVIEW

In response to the Advisory Action mailed November 21, 2006, Applicant respectfully requests a Pre-Appeal Brief review of this Application so that the rejection of the claims and the objections to the Application can be reconsidered prior to submission of an Appeal Brief.

REMARKS

This Request for Pre-Appeal Brief Review is being filed in accordance with the provisions set forth in the Official Gazette Notices of July 12, 2005 and January 10, 2006. Pursuant to the Official Gazette Notices, this Request for Pre-Appeal Brief Review is being filed concurrently with a Notice of Appeal. Applicant respectfully requests reconsideration of the Application in light of the remarks set forth below.

Claims 1-3, 9, 11-14, 16-19, and 22-24 currently stand rejected under 35 U.S.C. §103(a) as being unpatentable over Merchant, et al. Claims 4-8, 10, 15, 20, 21, 25, and 26 currently stand rejected under 35 U.S.C. §103(a) as being unpatentable over Merchant, et al. in view of Ohran, et al. In the prosecution of the present Application, the Examiner's rejections and assertions contain clear errors of law, including a failure to establish a prima facie case of obviousness. To assist the Panel in the review of this Request for Pre-Appeal Brief Review, Applicant submits the following brief summary for consideration.

In the Advisory Action of November 21, 2006 and the Final Action of September 6, 2006, the Examiner indicates that the claims are obvious from the Merchant, et al. application or the proposed combination of the Merchant, et al. application with the Ohran, et al. patent. However, neither the Merchant, et al. application nor the Ohran, et al. patent re-replicate data in a first node for storage in a third node in response to a failure in a second node that includes the replicated data. The Merchant, et al. application nor the Ohran, et al. patent disclose having storage of original data in a first node and replicated data in a second node let alone re-replicating the data for storage in a third node in response to a failure of either the first or second node. The Merchant, et al. application and the Ohran, et al. patent are

merely concerned with relocating data and not replicating the data for redundant data load sharing as provided in the claimed invention. Thus, the Examiner's reliance on the Merchant, et al. application and the Ohran, et al. patent contradicts the features of the claimed invention.

Most notable of the legal errors present in the examination of the Application is a failure of the Final Action of September 6, 2006 to establish a prima facie case of obviousness of the claims in the Application rejected under 35 U.S.C. §103(a). There has been no mention of the three criteria for a prima facie case of obviousness as spelled out in M.P.E.P. §2143. The Examiner has not cited any language from the prior art that would suggest that the Merchant, et al. application can be modified as proposed or combined in any manner with the Ohran, et al. patent. The Examiner only provides a baseless subjective and conclusory "it would have been obvious" statement for modifying the Merchant, et al. application or combining the Merchant, et al. application with the Ohran, et al. patent without providing any objective reasoning or citing any evidence of record to support such positions. The Examiner has not provided any reasons how the modified Merchant, et al. application or the proposed combination of the Merchant, et al. application with the Ohran, et al. patent would have any expectation of success let alone a reasonable expectation of success. Moreover, the Examiner has failed to show that the proposed modification or the proposed combination would even work for its intended purpose according to the claimed invention.

As for teaching the claimed invention, the Merchant, et al. application and the Ohran, et al. patent do not, either alone or in combination, teach or suggest an ability to generate a re-replicated data entry in a non-failed first or second one of a plurality of nodes for storage at a third one of the plurality of nodes in response to a failure in the

first or second one of the plurality of nodes. By contrast, the portions of the Merchant, et al. application cited by the Examiner specifically discuss removal of data from a faulty node. Thus, the Merchant, et al. application does not disclose re-replication of a data entry from a non-failed node for storage in a third node in response to identification of a failed node as provided in the claimed invention. The Examiner readily admits that the Merchant, et al. application fails to disclose this feature. The Examiner attempts to justify the rejection of the claims as being obvious over the Merchant, et al. application. However, the portions of the Merchant, et al. application cited by the Examiner are concerned with merely relocating data from a node that is being selected for removal and not to data replication for redundant sharing. Thus, the Merchant, et al. application is still directed to removing data only from a non-working node. Second, there is no disclosure in the Merchant, et al. application that suggests the re-replication of data from a first non-failed node for storage in a third node that occurs as a result of a failure in a second node as required in the claimed invention. Further, the Ohran, et al. patent fails to provide any disclosure combinable with the Merchant, et al. application that would be material to the patentability of the claims.

Based on the remarks above, the Merchant, et al. application and the Ohran, et al. patent are insufficient to support a rejection of the claims. Therefore, Applicant respectfully submits that the claims are patentably distinct from the Merchant, et al. application and the Ohran, et al. patent.

CONCLUSION

Applicant has now made an earnest attempt to place this Application in condition for allowance. For the foregoing reasons and for other apparent reasons, Applicant respectfully requests allowance of all pending claims.

The Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.

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